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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JAN 26 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations.)
(Boulder City, Las Vegas,)
and Cal-Nev-Ari, Nevada))

MM Docket No. 93-279
RM-8368, 8385

To: Mass Media Bureau (Policy & Rules)

REPLY COMMENTS

On Behalf of

Rock "N" Roll, Inc.

January 26, 1994

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Summary

Rock "N" Roll, Inc., Licensee of FM station KRRI, Boulder City, Nevada ("KRRI") petitioned the Commission to increase the channel separation between KRRI and KRBO for the purpose of alleviating interference between KRRI and KRBO. Prior thereto Richard W. Myers ("Myers") filed a mutually exclusive petition proposing a new FM allotment at Cal-Nev-Ari, Nevada. The Commission accepted KRRI's petition as a counterproposal to Myers' and requested comments on this filing. KRRI urges the Commission to grant KRRI's proposal and to deny Myers' competing proposal.

In its petition, KRRI demonstrated the existence of significant interference from KRBO within its 60 dBu and 70 dBu contours. KRRI's proposed channel separation alleviates interference to an existing station. While the area of interference may be outside of KRRI's community of license, there is no dispute that it is well within it's protected service area. Myers cites no authority that a station's protection against interference is limited to its community of license. As a Class C2 facility, KRRI is expected to serve a wide area and the Commission provides protection to its entire 60 dBu contour.

KRRI demonstrates that Cal-Nev-Ari does not qualify as a community under Commission policy and precedent. Cal-Nev-Ari has about 300 residents, many of them temporary, living in a double row of mobile homes. It is not incorporated, not

listed in the U.S. Census, nor is it a Census Designated Place. It lacks churches, a local government, a school system, has no local newspaper and no cohesive social or cultural life.

A Cal-Nev-Ari station will not be economically viable. Other than the casino in Cal-Nev-Ari and its few apparently associated establishments, there are no establishments which might possibly advertise on a radio station.

KRRI also demonstrates that, even assuming Cal-Nev-Ari is a community under Commission policy, it does not warrant an allotment in the face of KRRI's need for protection from interference. Myers' argument that provision of first local service is a high priority is not applicable here. Communities smaller than 1,000 population do not qualify for the first local service priority.

Myers' proposal to allot a new station to essentially a wide spot on a highway is without merit. KRRI has demonstrated the existence of severe interference within its protected service area and has presented the Commission with a realistic approach to solving the problem of an existing station. The needs of KRRI's listeners deserve preference over Myers' request for first service to a grouping of trailers and a casino which utterly fails to meet the Commission's indicia of community. KRRI is entitled to have its proposal granted.

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REPLY COMMENTS

Rock "N" Roll, Inc., licensee of FM station KRRI, Boulder City, Nevada, (hereinafter "KRRI"), by its attorney, hereby files these Reply Comments in response to the Commission's public notice of January 11, 1994.

Background.

On November 3, 1993, KRRI petitioned for rule making to alleviate interference to KRRI which is being caused by FM station KRBO, Las Vegas, Nevada. KRRI demonstrated therein that it was suffering significant interference from KRBO, not only within its 60 dBu service contour, but also within its 70 dBu contour. KRRI seeks to alleviate this interference by changing the channels of KRRI and KRBO so as to increase the channel separation between them.

In support of the proposed channel changes, KRRI attaches hereto the letter of Joseph W. Sands, of Sands Broadcast Engineering which describes the present problem KRRI is having due to KRBO and points out the benefits of increasing the

separation between the two stations.

At the same time as KRRI was preparing its petition for rulemaking, but unbeknownst to KRRI, On October 1, 1993, Myers filed a petition for rule making proposing the use of Channel 285A at Cal-Nev-Ari, Nevada. Myers' proposal is mutually exclusive with KRRI's petition. The Commission's Notice of Proposed Rulemaking in response to Myers' proposal was not released until November 12, 1993, after KRRI's petition was filed. For this reason, KRRI did not address Myers' proposal in its own petition. However, KRRI's proposal was timely filed for consideration in the Cal-Nev-Ari proceeding, and the Commission has properly considered KRRI's petition as a counterproposal worthy of full consideration in this proceeding. Myers' assertion in his Reply Comments, filed January 18, 1994, that his proposal is "unopposed", is disingenuous, for KRRI's petition for rulemaking is an opposing comment. There was no need for KRRI to repeat its proposal during the NPRM's comment period.

In its NPRM, the Commission was clearly unpersuaded that Cal-Nev-Ari is a community qualifying for an allotment.¹ It noted that its population is very small, approximately 300, and that it was not listed in the U.S. Census. Further, the

¹ In a footnote, Myers asserts that he is a Nevada resident, and such fact should somehow be persuasive in determining the issues of this case. Myers does not claim to be a resident of either Cal-Nev-Ari, or of the station's proposed service area. Moreover, the Commission has never looked to the characteristics of the petitioner, but rather to the communities involved.

Commission noted that, "[W]ith the exception of the casino, none of the businesses or organizations are specifically identified with names and addresses or shown to be intended to serve Cal-Nev-Ari as opposed to some other area." The Commission asked the petitioner to present "sufficient information to demonstrate that Cal-Nev-Ari has social, economic, cultural, or governmental indicia to qualify it as a 'community' for allotment purposes." Clearly, Myers has the burden of persuasion on this issue.

Myers responded to the Commission's request for additional information in his comments, continuing his assertion that Cal-Nev-Ari was a separate community deserving of its own station. Myers asserts that Senator Reid of Nevada also filed a letter of support for the allotment. However, the Commission's Docket files do not show any filing from the Senator. Attached hereto is the listing of materials filed in the Docket, and nothing from Senator Reid is shown. The Commission may not give any credence to this alleged comment, which does not appear in its files.

Herein, KRRI demonstrates (1) that Cal-Nev-Ari does not qualify as a community under Commission precedent, or alternatively (2) that even if it does barely meet the standards of a community, the public interest is better served by adopting KRRI's proposal.

(1) Cal-Nev-Ari is not a community.

In his comments, Myers asserted that the Commission has

"no bright dividing line that denotes when a community will be found to exist." However, he went on to list six elements which, he states, the Commission has utilized in the past. He also cited, but did not distinguish, the recent decision in Cleveland and Ebenezer, Mississippi, DA 93-1373, released December 13, 1993, (petition for reconsideration pending) in which the Commission determined that Ebenezer was not a community for allocation purposes, overturning a previous ruling to the contrary and deleting an allotted channel.

The similarities between Ebenezer and Cal-Nev-Ari, in terms of community indicia are marked. Both are very small population groupings, with Ebenezer having 100 residents, according to the 1992 Rand McNally Commercial Atlas. Cal-Nev-Ari has "about 300", according to Myers' comments.² Both Ebenezer and Cal-Nev-Ari have their own post office and Zip Code, volunteer fire department and water association. Neither area is incorporated, is listed in the U.S. Census, or is a Census Designated Place. Neither area has a local government, school system or local newspaper.

Myers provided a reasonably accurate description of Cal-Nev-Ari in the report of Victoria J. Evans and Donald E.

² While Myers' comments seeks to give the impression that Cal-Nev-Ari is growing, his own report quotes one resident as saying that the population "may double, but that would be an awfully lot." It may be concluded therefrom that the population will never exceed 600 in the foreseeable future.

Carns, attached to his comments.³ The entire area consists of a double row of mobile homes with an airstrip behind them on one side of the road. On the other side is a casino which contains a post office, one gas station which is closed Wednesdays and Thursdays, a laundromat, more mobile homes, a motel, a market and RV park, and a ranch. Although not discussed in the Evans and Carns report, it appears from the casino advertising material submitted with Myers' comments that the service station, laundromat, RV park, and market are part of, or affiliated with, the casino. In effect, they are adjuncts to the casino, not separate businesses. Myers lists no churches in Cal-Nev-Ari.⁴ In contrast to Ebenezer, which has two churches, Cal-Nev-Ari has none.

Myers' comments assert, "despite Cal-Nev-Ari's small permanent population, there is a viable economic base for a radio station in the tourist population that visits the community and in and (sic) the significant highway traffic that passes by." Myers fails to provide any basis for this assertion, however. Within Cal-Nev-Ari, other than the casino and its related activities, there are no establishments which might possibly advertise on a radio station. Clearly, one operation is insufficient to support a radio station.

³ Attached hereto are recent photographs of the area, showing how desolate it truly is.

⁴ Myers states that the dining room in the casino is used for memorial services, but their frequency is not stated. No mention is made of other religious activities in Cal-Nev-Ari.

Moreover, it is not clear that any other significant population will be served by the Cal-Nev-Ari station, or that there are other potential advertisers for the station. Myers fails to describe the population which would be served by a Cal-Nev-Ari station, nor whether such service area could support a stand-alone radio station. The only other "community" which might be within the coverage area of a Cal-Nev-Ari station is Searchlight, whose population is also about 300, according to Rand McNally.⁵ See the attached map of southern Nevada. The Commission emphasized that a stations' primary obligation is to its community of license and such community must be capable of supporting a station in Cleveland and Ebenezer, Mississippi, supra. In view of the extremely small population of Cal-Nev-Ari, it is incumbent on the proponent to show that a station would be economically viable, for it would serve no purpose to allot a station which would not be built, or if built would go dark shortly thereafter. Myers has not made a showing of economic viability.

The Commission also asked Myers to provide indicia of community status in the areas of social, culture, and governmental. Myers' showing in these areas fails to demonstrate the existence of a community.

There are no regular social events, or social clubs identified with Cal-Nev-Ari. Myers comments notes a dancing

⁵ The local telephone company uses the same 297 exchange for Searchlight, Cottonwood Cove, and Cal-Nev-Ari. See the attached portion of the telephone book.

class which meets at the casino's dining hall. As the Commission correctly noted in its NPRM, this is not necessarily a community function; it may be that the location is simply convenient and available. In fact, the dance instructor does not live in Cal-Nev-Ari. It appears that the dance class is not a Cal-Nev-Ari activity, but is open to anyone interested, irrespective of residence.

Myers' comments note that the casino is the hub of social life in the area. "... some residents spend their days drinking at the bar." In effect, it is saying that people go to the nearest establishment and partake of whatever it offers. Residents drinking at a bar does not demonstrate community status.

Myers has not shown any cultural cohesiveness in Cal-Nev-Ari. Myers concedes that many of the residents are there for only a short period of time. He acknowledges that they plan to stay in the area only as long as their jobs require it. Afterwards, they will move away, to outside Nevada, where they have families or own property. Their home, while in Cal-Nev-Ari is simply an RV, or recreational vehicle. Clearly, these people consider themselves to be visitors and feel no attraction to the particular area.

Further demonstrating the temporal nature of the residents is the fact that none of the streets in the area, with the exception of US 95 (maintained by the federal government), is paved. All other streets are merely dirt

paths. They lack even gravel which would reduce the dust. Little or nothing exists in Cal-Nev-Ari to give the impression of a permanent, thriving, community.

Myers makes no mention of any activity having to do with the arts, with education, childhood or adult, or with any other similar community activity in Cal-Nev-Ari. The typical social activity is watching television; many people have satellite dishes which increase the number of available channels. There are no schools in Cal-Nev-Ari. The nearest elementary school is in Searchlight, and the closest high school is in Laughlin.

For newspaper information, most people subscribe to the Las Vegas Review-Journal. There is no publication issued in Cal-Nev-Ari; no need for a local source of local news has been shown.

There is no Cal-Nev-Ari agency to perform any governmental-type activities. The existence of a volunteer fire house is due to the distance from other fire houses; the fact of its existence is insufficient to show that Cal-Nev-Ari is a community.

Myers argues that, as Cal-Nev-Ari is not part of any other community, it therefore must be considered to be a separate community worthy of an FM allotment. Myers' conclusion does not follow, for not everyone resides in a "community" as defined by the Commission. People can and do live in rural areas, such as the Cal-Nev-Ari area, without being part

of any community, as defined by the Commission for allotment purposes. In fact, many of the residents live there because it is small and quiet. It is simply a group of mobile homes clustered around a casino and air strip. Myers' approach would grant community status to every population grouping which is not part of another community, no matter how small. This is simply not Commission policy.

Accordingly, based upon Commission precedent in Cleveland and Ebenezer, and similar cases, Cal-Nev-Ari does not qualify as a community for allotment purposes.

(2) The public interest is better served by adoption of KRRI's proposal and denial of Myers' petition.

Even were the Commission to determine that Cal-Nev-Ari is a community in its own right, Channel 285A should not be allotted there, in view of the greater need for the channel changes proposed by KRRI. Myers refers to the Commission's 307(b) priorities in arguing that provision of a first local service is high priority. While such is a general rule, there are numerous exceptions. See, e.g. Beacon Broadcasting, 2 FCC Rcd 3469 (1987), aff'd sub nom New South Broadcasting v FCC, 897 F. 2d 867 (D.C. Cir. 1989), and Debra D. Carrigan, 100 FCC 2d 721, (Rev. Bd. 1985), review denied, 104 FCC 2d 826 (1986). In fact, the Commission has stated that communities smaller than 1,000 people, as is Cal-Nev-Ari, do not qualify for the first local service priority. "Moreover, we have not been directed to a single case in which a community with a

population of less than 1000 has received a dispositive Section 307(b) preference in a multi-community Section 307(b) situation." (Footnote omitted.) Ruarch Associates, 99 FCC 2d 338 (Rev. Bd. 1984), aff'd., 101 FCC 2d 1358 (1985).

Myers, the Cal-Nev-Ari proponent, does not assert that his proposed station will cover an underserved area; as noted above, he fails to even state the population residing within its likely coverage area.

KRRI's proposal will alleviate a serious problem to reception of an existing station, a problem not anticipated by the Commission when it allotted Channel 286C2 to Las Vegas. Myers would have the Commission pretend that there is no problem. He argues that as long as the Commission's mileage standards are observed in the FM band, no additional protection from interference may be obtained. Such is not the case, however. In the past, the Commission required a number of FM stations in the Minneapolis-St. Paul area to reduce power due to interference with the reception of other area stations. KRRI has demonstrated the existence of severe interference within its protected service area, and has presented the Commission with a realistic approach toward solving the problem.⁶ The needs of KRRI's listeners must be

⁶ The interference is continuing. As recently as January 19, 1994, KRRI received a complaint from a Rudy Burgess, of 1900 Indrio Circle, Rainbow/Lake Mead/Vegas Drive area, home telephone number 702-646-2864, office number 702-224-5555. Ms. Burgess stated that she is unable to receive KRRI on her large digital radio in her living room due to interference from KRBO.

considered. They are part of the public in whose interest the Commission is required to act.

Although the area of interference to KRRI may be outside its community of license, there is no dispute that there is interference well within its protected service area. Myers cites no authority that a station's protection against interference is limited to its community of license. As a Class C2 facility, KRRI is expected to serve a wide area, and the Commission provides protection to its entire 60 dBu contour. The Commission recognized KRRI's obligation to provide a wide area service when it upgraded the station from Class A to Class C2.

KRRI's listeners are entitled to interference-free reception which may be accomplished only by granting its proposal. The problem with KRRI's reception has been recognized by U.S. Senator Richard Bryan, who has indicated his concern that the interference be resolved. See the attached letter from the Senator.

In contrast, Myers seeks to allot a new station to a population grouping of about 350 people, with no means to support such a station either in the community of license, or in its overall service area. There is simply no merit to Myers' proposal. The Commission must grant KRRI's proposal and deny the competing proposal of Richard W. Myers.

KRRI continues to believe that KRBO, as the newcomer, should be required to pay all costs associated with the change


willing to pay its own costs, and also, if required by the Commission, to pay the reasonable and prudent costs of KRBO in changing its frequency.

Accordingly, Section 73.202(b) of the rules should be amended as follows:

<u>CITY</u>	<u>CURRENT</u>	<u>PROPOSED</u>
Boulder City, Nevada	288C2	286C2
Las Vegas, Nevada	286C2	289C2
Cal-Nev-Ari, Nevada	---	----

Respectfully submitted,

Rock "N" Roll, Inc.

By 
Jerrold Miller
Its Attorney

January 26, 1994

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Dear Mr. Miller

Arthur Ferraro of KRRI, Boulder City, Nevada, requested that I write to you about the present condition of the interference to KRRI's signal from KRBO.

As you know, KRRI began to receive interference upon the commencement of broadcasting by KRBO (Patmor Broadcasting), Las Vegas on its 105.1 MHz channel. Unfortunately, although it would appear that a 400 KHz spacing would be sufficient to protect both stations from interference, this has not proved to be the case. Both stations receive interference from the other's transmitted signals. The degree and location of the points of interference vary. Suffice it to say that KRRI receives interference that prevents listener's access to its programming within both its 70 dBu (3.16 mV) and 60 dBu (60 mV) coverage areas.

In all of the interference calls received, the caller reported KRBO "covering up" KRRI's signal. The cause of this interference is most likely "AFC Hopping" by the receiver, or poor selectivity by the receiver. AFC Hopping occurs when a stronger signal resides sufficiently close in frequency to a weaker signal. The Automatic Frequency Control (AFC) can retune the radio to a stronger signal (KRBO) because a radio receiver is unable to determine which signal is the desired signal. Lack of selectivity is simply the inability of a radio receiver to discriminate between signals. Again, the stronger signal prevails. In both cases, there is only two possible actions to eliminate the interference:

- 1). Filter out or reduce the signal strength of the interfering signal.
- 2). Increase the frequency separation between the two signals.

Clearly, filtering each radio receiver is difficult, if not impossible, because it is not possible to know if all cases of interference have been Identified and resolved. Also, filtering does not eliminate future cases of interference from occurring.

Increasing the spacing of the signals to 600 KHz, from the current 200 KHz, reduces the relative signal strength of the interfering signal to the radio receiver. This occurs because the filters of radio receivers reach their ultimate interference rejection until around 500 KHz from the desired signal.

KRRI conducted a database study conducted on October 26, 1993, to determine the feasibility of increasing the KRRI/KRBO frequency to 600 KHz or greater. The study illustrated that KRRI could move to 105.1 MHz and KRBO to 105.7 MHz using their current transmitter sites. Unfortunately an application for Proposed rule making, filed on October 20 and released on November 12, 1993, is mutually exclusive to the above proposal.

It should be noted that Cal-Nev-Ari, Nevada is not listed on USGS topographic maps. If I can provide any further information, please let me know.

Sincerely,

Joseph W. Sands

FEDERAL COMMUNICATIONS COMMISSION

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Law Firm Name: ARENT FOX KINTNER
Attorney/Author Name: TANNENWALD, PETER
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